

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BROADCAST MUSIC, INC.;)
UNIVERSAL-SONGS OF POLYGRAM)
INTERNATIONAL, INC.;)
SONY/ATV SONGS LLC d/b/a SONY/ATV)
TREE PUBLISHING; DYNATONE PUBLISHING)
COMPANY; RONDOR MUSIC)
INTERNATIONAL, INC. d/b/a IRVING MUSIC;)
JAMES WILLIAM BUFFETT a/k/a JIMMY)
BUFFETT, an individual d/b/a CORAL REEFER)
MUSIC; FOUR- TEENTH HOUR MUSIC INC.;)
SPRINGTIME MUSIC, INC.; EMI VIRGIN)
SONGS, INC. d/b/a EMI FULL NELSON MUSIC;)
FREDERICK S. BIENSTOCK and)
HAMMERSTEIN MUSIC & THEATRE)
COMPANY, INC., a Connecticut Partnership d/b/a)
EDWARD B.MARKS MUSIC COMPANY;)
DANDELION MUSIC CO., A Division of)
JAMIE MUSIC PUBLISHING CO.; PRONTO)
MUSIC, a division of COTILLION MUSIC, INC.;)
QUINON R. IVY d/b/a QUINVY MUSIC)
PUBLISHING CO.; WARNER-TAMERLANE)
PUBLISHING CORP.; JEFF TROTT d/b/a)
TROTTSKY MUSIC; SHERYL SUZANNE)
CROW d/b/a OLD CROW MUSIC; SONGS OF)
UNIVERSAL, INC.; LISA ANNE LOEB,)
an Individual d/b/a FURIOUS ROSE MUSIC;)
JUAN P. PATINO, an individual d/b/a)
JUAN PATINO MUSIC PUBLISHING,)

Plaintiffs,)

v.)

MARINA VIEW CORPORATION d/b/a)
SKYLINE BAR & GRILL,)
GRIMOALDO A. RUSCITO,)
ANTONIO C. RUSCITO and)
ANTHONY RUSCITO, each individually,)

Defendants.)

Civil Action No.: 05 11845 RCL

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiffs Broadcast Music, Inc., et al hereby move that the Court enter summary judgment against defendants in the form of the proposed Order of Judgment submitted herewith, finding defendants liable for infringement of plaintiffs' copyrights and granting the following relief:

- (1) An injunction against further infringement pursuant to 17 U.S.C. § 502;
- (2) Statutory damages of not less than two thousand five hundred dollars (\$2,500.00) for each of the twelve copyright infringements, pursuant to 17 U.S.C. §504(c)(1);
- (3) Costs and attorneys' fees, pursuant to 17 U.S.C. §505; and
- (4) Interest on the full amount of this Judgment, from the date judgment is entered, pursuant to 28 U.S.C. §1961.

This motion is supported by the Memorandum of Law submitted herewith, and by the Affidavits of Lawrence E. Stevens, Judith M. Saffer, and Amy C. Mainelli, also submitted herewith.

Plaintiffs additionally note that the deadline to respond to discovery requests has passed without defendants' having responding to *any* of the discovery requests served upon them by plaintiffs. Because defendants have, by their silence, been deemed to admit the statements contained in the Requests for Admissions served upon them, plaintiffs believe that no issue of material fact remains in dispute. However, in the event that the Court should for any reason find that any issue of fact remains in dispute, plaintiffs seek the opportunity to take the discovery that defendants' evasion has denied them, so as to present an augmented record to the Court for reconsideration.

Respectfully submitted,
BROADCAST MUSIC, INC.,
Plaintiffs,
By their attorneys,

Date: July 26, 2006

/s/ Amy C. Mainelli
William S. Strong, Esq. BBO#483520
Amy C. Mainelli, Esq. BBO #657201
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CERTIFICATE OF SERVICE

I, Amy C. Mainelli, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by first class mail to those indicated as non registered participants on July 26, 2006.

/s/ Amy C. Mainelli
Amy C. Mainelli

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PROPOSED ORDER

This matter came before the Court on Plaintiffs' Motion for Summary Judgment. The Court having considered the pleadings, affidavits and memorandum, it is now ORDERED AND ADJUDGED:

1. It is the finding of this Court that defendants Marina View Corporation d/b/a Skyline Bar & Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito knowingly and intentionally infringed upon the copyrights of the twelve musical compositions owned and/or licensed by plaintiffs and listed in plaintiffs' Complaint. Plaintiffs' Motion for Summary Judgment against defendants is therefore GRANTED.

2. Plaintiffs shall recover from defendants Marina View Corporation d/b/a Skyline Bar & Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito, jointly and severally, statutory damages in the amount of \$2,500.00 for each of the twelve musical compositions, for a total of \$30,000.00, pursuant to 17 U.S.C. Section 504(c)(1).

3. Plaintiffs shall recover from defendants Marina View Corporation d/b/a Skyline Bar & Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito, jointly and severally, full costs in this action.

4. Plaintiffs shall recover from Defendants Marina View Corporation d/b/a Skyline Bar & Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito, jointly and severally, their reasonable attorneys' fees and expenses pursuant to 17 U.S.C. §505. As of June 26, 2006, such fees stood at \$4,444.47. Within thirty days of the entry of this Order of Judgment, plaintiffs may apply for any additional fees and expenses incurred since then. In addition, plaintiffs shall be entitled to any reasonable fees and expenses incurred in collecting upon this judgment.

5. Plaintiffs shall recover from defendants Marina View Corporation d/b/a Skyline Bar

& Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito, jointly and severally, interest on the full amount of this judgment, from the date of this judgment, pursuant to 28 U.S.C. Section 1961.

6. Defendants Marina View Corporation d/b/a Skyline Bar & Grill, Grimoaldo A. Ruscito, Antonio C. Ruscito and Anthony Ruscito and their agents, servants, employees and all persons acting under their permission or authority shall be permanently enjoined and restrained from infringing, in any manner, each and all of the copyrighted musical compositions licensed from time to time by Broadcast Music, Inc.

7. This Court shall retain jurisdiction over this action for the purpose of enforcing the judgment herein granted.

Date : _____

Reginald C. Lindsay, United States District Judge